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August 2, 1999

BY FAX: 212-964-1810

Mr. Beau Friedlander  
Context Media  
368 Broadway  
Suite 314  
New York, New York 10013

Re: TRUTH VERSUS LIES

As I know David has emphasized, there is no "fair use" formula that is guaranteed to satisfy all judges called upon to evaluate one person's use of another's copyrighted writings.

The statute and cases, rather, set out a series of diagnostic criteria which Courts must consider it in reaching their (ultimately subjective) determinations.

With regards to Ted's use of David's and Wanda's letters, the following principles and guidelines should be considered:

1. Each letter is considered a separate work of the copyright owner, i.e., the person who wrote the letter.
2. Any given use of another's letter would necessarily be one of the following: a quotation, a paraphrase, or a summary.
3. Since copyright protects the author's unique expression of ideas and facts, but not those ideas and facts themselves, a summary of contents which does not quote or paraphrase any of the contents, actually presents no legal problem. So to the extent Ted can make his point by summarizing the contents of a given letter, this would be his safest option. For example, Ted may write: "On [date] David wrote me a letter in which David describes the character of so-and-so. He writes that so-and-so believes xyz and David in his letter vigorously supports so-and-so's point of view."

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4. With regard to quotation, the problem is obvious: In quoting, one is taking the precise expression of the copyright owner's work. In order for this to have a chance of withstanding legal challenge, the following guidelines must be observed: (a) the quoted material must represent a very small percentage of the total text of the letter from which it is drawn; (b) the quoted portion must not constitute substantially all that is actually of interest in the letter; and (c) the purpose of the quotation must be clearly to throw a critical cross-light upon the writing and/or the writer. From the standpoint of litigation, the least use of quotations is the best. Also, ellipses help.
5. Slightly more leeway is available to paraphrase. In paraphrase, the thoughts of the author are followed more or less closely and in a way that might permit the reader to infer the original expression of the author. A paraphrase is very close to the original could be viewed as an attempt to quote without literally quoting. In such case, the paraphrase would be treated virtually the same as quotation. So the closer the paraphrase, the less it should be used.

These would appear to be the principles to be communicated to Ted in his editorial work. Of necessity, they are general, but nevertheless as specific as they can be under these circumstances. I do not doubt that Ted will grasp the point, and have little difficulty in applying them in his editorial task.

If you require anything further at this point, give me a ring.

With all best wishes.

Sincerely,



Jeffrey Craig Miller

JCM:ht